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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SELECT PORTFOLIO SERVICING,  
INC., et al.,

Plaintiff(s),

v.

FRENY DESAI,

Defendant(s).

2:12-CV-1338 JCM (CWH)

**ORDER**

On July 30, 2012, this case was removed from state court. (Doc. # 1). After reviewing the amended removal petition for proper jurisdiction, this court, *sua sponte*, remands this case to state court for lack of subject matter jurisdiction.

**I. Factual Background**

On December 29, 2006, defendant Freny S. Desai obtained title to real property located at 7908 Indian Cloud, Ave., Las Vegas, NV 89129. (Doc. # 1-3, 2:21-22). Defendant executed a promissory note to obtain the property and secured payment for the note by executing a deed of trust. (Doc. # 1-3, 2:27-3:5). Plaintiff Select Portfolio Serving, Inc. is now the holder for value of the note and deed of trust. (Doc. # 1-3, 3:9-11). As of June 15, 2012, there remains due and owing \$199,999.98 on the note. (Doc. # 1-3, 3:17-18).

On June 20, 2012, plaintiff filed a complaint for judicial foreclosure in the Eighth Judicial District. (Doc. # 1-3: 1). Plaintiff alleges that under the terms of the deed of trust, it is entitled to

1 recover on the note or foreclose on the deed. (Doc. # 1-3, 4:2-3). Further, plaintiff alleges that  
 2 pursuant to NRS 30.040, it is entitled to declaratory relief as to the validity of the agreement. (Doc.  
 3 # 1-3, 4:24-25).

4 On July 30, 2012, defendant filed a petition for removal in this court to remove case number  
 5 A-12-663892-C from state to federal court. (Doc. # 1). On August 2, 2012, plaintiff moved to  
 6 remand the case to state court. (Doc. # 4). On August 6, 2012, defendant amended her petition for  
 7 removal. (Doc. # 5).<sup>1</sup>

## 8 **II. Discussion**

### 9 **A. Legal Standard**

10 An action filed in state court may be removed to federal court if the federal court would have  
 11 had original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). This court has original  
 12 subject matter jurisdiction over two types of cases. First, pursuant to its diversity jurisdiction, the  
 13 court may preside over suits between citizens of different states where the amount in controversy  
 14 exceeds to sum or value of \$75,000. 28 U.S.C. § 1332(a). Second, pursuant to 28 U.S.C. § 1331, this  
 15 court has federal question jurisdiction over “all civil actions arising under the Constitution, laws, or  
 16 treaties of the United States.”

17 If, following removal, a federal court determines there was a defect in the removal procedure  
 18 or an absence of subject matter jurisdiction, it may remand the action to state court sua sponte or on  
 19 motion of a party. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). In deciding  
 20 whether removal was proper, courts strictly construe the statute against finding jurisdiction, and the  
 21 party invoking federal jurisdiction bears the burden of establishing that removal was appropriate.  
 22 *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009) (citations  
 23 omitted). Where doubt exists regarding the right to remove an action, it should be resolved in favor  
 24 of remand to state court. *See Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th  
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26 <sup>1</sup> The court acknowledges that plaintiff's motion for remand (doc. # 4) is mooted by defendant filing an  
 27 amended petition for removal (doc. # 5). Removal petitions may be amended freely within the thirty-day period set forth  
 28 in 28 U.S.C. § 1446(b). Here, defendant represents that she was served on July 9, 2012 (doc. # 5, 1:25-26) and defendant  
 amended her removal petition on August 6, 2012 (doc. # 5). Thus, the amendment was timely.

1 Cir. 2003).

2 B. Analysis

3 1. Diversity Jurisdiction

4 Defendant attempts to establish diversity jurisdiction pursuant to 28 U.S.C. § 1332 by  
5 demonstrating that there is complete diversity among the parties.

6 a. *Amount in Controversy*

7 In the amended removal petition, defendant does not explain how the amount in controversy  
8 has been met. Defendant simply states "the amount in controversy, exclusive of interest and costs,  
9 exceeds \$75,000." (Doc. # 5, 2:14). Without more, the amended petition fails to meet this  
10 requirement. However, in fairness the court looks to the complaint and determines that the alleged  
11 payment due and owing is \$199,999.98 (doc. # 1-3, 3:18); thus, the amount in controversy  
12 requirement has been established.

13 b. *Complete Diversity*

14 It is well settled that in the context of diversity jurisdiction, a corporation is a citizen of (1)  
15 the state under whose laws it is organized or incorporated; and (2) the state of its "principal place  
16 of business." 28 U.S.C. § 1332(c)(1).

17 Defendant states that she is a citizen of Nevada (doc. # 5, 2:25-26) and that plaintiff was  
18 incorporated in Utah (doc. # 5, 2:24), thus establishing "complete diversity between Plaintiff and  
19 Defendant" (doc. # 5, 2:27-3:1). Defendant, however, fails to discuss the location of plaintiff's  
20 principal place of business and establish that it is also diverse from defendant's state of citizenship.<sup>2</sup>  
21 However, if plaintiff's principal place of business is not in Nevada, then diversity would exist among  
22 the parties.

23 c. *Forum Defendant Rule*

24 Pursuant to the forum defendant rule, removal on the basis of diversity jurisdiction is  
25 confined to "instances where no defendant is a citizen of the forum state." 28 U.S.C. § 1441(b); *see*  
26 *also Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 939 (9th Cir. 2006).

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28 <sup>2</sup>Plaintiff's state of incorporation is only one component of a corporation's state of citizenship.

1 As discussed, defendant states that she is a citizen of Nevada. (Doc. # 5, 2:25-26). Because  
 2 this action was filed in state court in Nevada and because defendant is domiciled in Nevada, the  
 3 forum defendant rule bars defendant from removing this action to federal court.

4 2. Federal Question Jurisdiction

5 Defendant also attempts to establish federal question jurisdiction pursuant to 28 U.S.C. §  
 6 1331 by showing federal laws that have been allegedly violated by plaintiff.

7 A suit arises “under the Constitution, laws, or treaties of the United States,” if “the plaintiff’s  
 8 well-pleaded complaint raises issues of federal law.” *City of Chi. v. Int’l Coll. of Surgeons*, 522 U.S.  
 9 156, 163 (1997). As explained by the Supreme Court, “the presence of even one claim ‘arising  
 10 under’ federal law is sufficient to satisfy the requirement that the case be within the original  
 11 jurisdiction of the district court for removal.” *Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 386  
 12 (1998).

13 Defendant argues that federal question jurisdiction is implicated because “the State Court  
 14 action subsumed federally cognizable causes of action which are now expressed and set forth in the  
 15 Counterclaim and Cross-Complaint filed concurrently herewith.” (Doc. # 5, 1:27-2:2).

16 However, the causes of action in the state court complaint are each based on Nevada state  
 17 law (breach of a note and deed of trust and a claim for declaratory relief); thus, there are no federal  
 18 laws stated on the face of the complaint or implicated by the alleged causes of action.

19 **III. Conclusion**

20 Based on the foregoing discussion, this court lacks subject matter jurisdiction under both 28  
 21 U.S.C. § 1332 and 28 U.S.C. § 1331.

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1           Accordingly,


2           IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this matter be, and the  
3 same hereby is, REMANDED to state court due to this court's lack of subject matter jurisdiction.

4           IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to  
5 remand to state court (doc. # 4) be, and the same hereby is, moot due to defendant timely filing an  
6 amended removal petition.

7           DATED September 7 , 2012.

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UNITED STATES DISTRICT JUDGE

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